



**IN THE HIGH COURT OF ESWATINI**

**JUDGMENT**

In the matter Between:

Case No. 2030/18

**VELEZWENI MNGOMEZULU**

Plaintiff

And

**BONGANI KHAMANGA MAGAGULA**

1<sup>st</sup> Defendant

**THE ATTORNEY GENERAL**

2<sup>nd</sup> Defendant

Neutral citation : ***Velezweni Mngomezulu v Bongani Khamanga Magagula and Another (2030\2012) [2019] SZHC 139 (30<sup>th</sup> July, 2019)***

Coram : **M. Dlamini J**

Heard : **20<sup>th</sup> May, 2019**

Delivered : **30<sup>th</sup> July, 2019**

***Interrogation*** : ***There is nothing amiss by police investigators to call a suspect to report at the police station for purposes of ascertaining his version vis-a-vis that of the complainant - the law however does not countenance that in the course of suspects interrogation, he should be subjected to any form of assault -***

*this constitutes an unlawful conduct which may result in a civil and criminal sanction.*

**Summary:** Plaintiff asserted in his Particulars of Claim that he suffered damages to the tune of E150 650.00 as a result of assaults inflicted upon his body by the 1<sup>st</sup> defendant who was in the company of the Royal eSwatini Police. 1<sup>st</sup> defendant disputed plaintiff's claim and stated that plaintiff was called to appear before the police for purposes of assisting with investigations.

### **The Parties**

[1] The plaintiff is an adult male of Mbulungwane area, Shiselweni region. The 1<sup>st</sup> defendant is an adult male in the employ of the Royal eSwatini Police, stationed in Matsapha. He is identified as **Kamanga** and not **Kamanda**. The 2<sup>nd</sup> defendant is the legal representative of the Government. Its principal office is at 4<sup>th</sup> floor, Justice Building, Usuthu Link Road, Mbabane, Hhohho.

### **Parties Case**

[2] The plaintiff has alleged that on 15<sup>th</sup> August, 2012 he was called to report at the Matsapha Police Station. He was then assaulted and suffered a number of injuries. As a result he suffered damages to the total of E150 650.00. The initial claim was E200 650.00. On the hearing date plaintiff's Counsel submitted that the claim of E50 000 arising from estimated future medical expenses was abandoned. Defendant refused to pay the said sum despite demand.

### **Defendants**

[3] The 1<sup>st</sup> defendant have pleaded that he did not assault the plaintiff. He only invited plaintiff to appear at Matsapha Police Station in order to assist investigate a criminal charge of indecent assault laid against him.

### **Oral Evidence**

[4] The plaintiff, **Velezweni Vusi Mngometulu** took the witness stand and on oath testified that in 2012, he worked as a security guard at Afrotin. 1<sup>st</sup> defendant called him saying that he should report to the police station. He obliged. This was in the morning. He was advised that 1<sup>st</sup> defendant would report for duty in the afternoon. He left to return in the afternoon. Upon his return, he found four police officers in the criminal investigation department. He greeted them. They responded and introduced themselves as **Khamanga Magagula, Sacolo** and **Thring**. He could not recall the fourth officer who was male.

[5] The officers told him that they were investigating him for a certain matter. 1<sup>st</sup> defendant stood up and assaulted him with an open hand and a fist. Blood oozed from his nostrils. The other police officers laughed at him when blood oozed. 1<sup>st</sup> defendant then told him that he was in love with his girlfriend. He then said that he was sorry that the said girl was also his (**Khamanga's**) girlfriend. The other three officers laughed and left the room.

[6] Another officer entered by the name of **Duma Mngometulu**. Plaintiff told **Duma Mngometulu** that he had been with his girlfriend the previous day after she paid him a visit at Mahlabatsini where he was renting a room. She was a **Hlophe** girl. After 1<sup>st</sup> defendant apologised for what he had done, plaintiff then asked him to write a letter so that he could be attended by a

doctor. 1<sup>st</sup> defendant told plaintiff to advise the doctor that he had been assaulted by criminals. 1<sup>st</sup> defendant then pretended to be writing something in a book. He asked for his name and where he was residing. He then said he should go to hospital. He however did not give him the doctor's form.

[7] **Plaintiff** did go to hospital and was attended by a doctor who noted that he was injured on the eyes. The doctor gave him two letters and a prescription note. They were marked exhibit B1, B2 and B3 respectively. He did see a statement for the first time from his attorney. He never recorded a statement. He was not charged and prosecuted for any offence. After he was discharged from hospital, he returned to the police station to see the 1<sup>st</sup> defendant's commander. The commander attended to him and thanked him for the information. He recorded his contact address and undertook to call him after investigation.

[8] Plaintiff did meet his **Hlophe** girlfriend after the assault. The **Hlophe** girlfriend explained to him that 1<sup>st</sup> defendant perused her cell phone where he discovered plaintiff's cell number. It is then that he called plaintiff. One day, while he was going into a shop, he met 1<sup>st</sup> defendant who apologised, saying that he was sorry. He wanted to give him E500 but he refused to take it. **Plaintiff** was cross-examined at length. I shall refer to his cross examination later.

[9] PW2 was **Dr. Motuma Demisse**, a general surgeon who holds a Masters degree in public health. He works at the Raleigh Fitkin Memorial Hospital, Manzini. He testified that on 16<sup>th</sup> August, 2012, plaintiff came to hospital. He was attended by **Dr. Mkhize**. He diagnosed him as having a soft tissue injury. He prescribed bruffen. A soft tissue injury ranges from minor to

severe. Following that he did not do anything further on plaintiff, it meant that the injury was minor.

[10] The diagnoses “*soft tissue injury secondary to assault*” meant that the injury was due to assault. On exhibit C2, **Dr. Chilumba** merely made a sick note. He identified the illness as confidential. He gave plaintiff a day off from work. This was on 21<sup>st</sup> August, 2012. On 2<sup>nd</sup> July 2013, a year later, plaintiff came for a medical report. He authored the report whose content reveals that he had multiple bruises on the face and right sub conjunctival haemorrhage. Plaintiff returned later as he was dissatisfied with the report. He added a portion to what he authored prior.

[11] The next witness was **Dr. Mkhize**. I shall refer to his evidence under adjudication.

[12] Counsel for plaintiff informed the court that the next witness ought to be the police officer who arrived at the CID’s office while he was under interrogation and who saw him while soaked in blood. This was an officer by the name of **Duma Mngometulu**. The court ordered that the witness should attend to court to give evidence on the matter. He complied and testified under oath. He identified himself as **Constable Duma Mngometulu**. He testified that he was on duty on 15<sup>th</sup> August, 2012. He was based at Matsapha Rapid Response Unit in Mahhala area. He went via the police station to borrow a bullet proof vests. He entered the CID office and found **Inspector Simelane, Sergeant Sacolo** and other officers. He noticed plaintiff who was well known to him following that they came from the same home area. He greeted him and enquired why he was at the police station. Plaintiff explained that he had been called for questioning concerning his girlfriend’s matter. **Duma Mngometulu** promised him that he would check him later.

[13] He proceeded with his mission and left the police station. He did not see him later that day. He however, met him some days later. Plaintiff had approached him. He asked him to furnish him with the force number of **Constable Bongani Magagula**. He informed him that he was assaulted by the police on the day he was in the CID offices. He advised plaintiff to go to the police station and lodge a formal complaint. At this stage, the plaintiff closed his case. The defendant called three witnesses.

### Defence

[14] The first witness was **Detective Constable Bongani Magagula** who on oath pointed out that he is nicknamed as **Kamanga**. He was a police officer and in August, 2012 based in Matsapha police station. He denied ever being at work in the afternoon of 15<sup>th</sup> August, 2012. He testified that he never dealt with **Nolwazi Hlophe's** complaint. He said that he did not know **Nolwazi**. He never met plaintiff on the following day to offer him the sum of E500.

[15] The second defence witness was **Assistance Inspector Bhekisisa Simelane**. He testified that he was on duty on 15<sup>th</sup> August, 2012. He knew plaintiff from his home area where they had ample opportunity to interact with each other. They called each other brothers. Around 6:00pm on the 15<sup>th</sup> August 2012, plaintiff arrived into the CID offices for interrogation on an indecent assault charge. They greeted each other. **Sergeant Sacolo** was the lead investigator. He was assisted by **Constable Vilakati, Mamba, Myeni and Matsebula**. This witness was not part of the investigation team but was moving in and out the CID's office. The 1<sup>st</sup> defendant was not part of the investigation team.

[16] After the interrogation and when plaintiff was leaving the police station, he interacted with plaintiff. They spoke as acquaintances. Plaintiff was not

injured. He was in the same conditions and mood as he had arrived. On the following day, plaintiff arrived at his police compound. He asked him to give him the full particulars of 1<sup>st</sup> defendant. He enquired why he wanted 1<sup>st</sup> defendant particulars. Plaintiff refused to disclose the reasons. However, plaintiff did not insist on **Magagula's** particulars. They continued to chat on other matters.

[17] **Detective Sergeant Nompumelelo Sacolo** was the next witness. She identified the plaintiff as a suspect under an indecent assault complaint. She called the plaintiff to answer to the allegations. Plaintiff arrived to find **Sacolo** in the company of **Constable Simelane, Vilakati Myeni, Mamba, Hlatshwayo, Gumedze** and **Masango**. 1<sup>st</sup> defendant was not in their company. She attended to the plaintiff who then recorded a statement. Plaintiff was never assaulted by any police. She then handed the entire docket to the court. All the defence's witnesses were extensively cross-examined.

### **Adjudication**

#### **The Issue**

[18] The question for determination is crisp: Was the plaintiff assaulted by the 1<sup>st</sup> defendant?

#### **Legal Principles**

[19] There is nothing amiss by police investigators to call a suspect to report at the police station for purposes of ascertaining his version *vis-a-vis* that of the complainant. The law however does not countenance that in the course of suspects interrogation, he should be subjected to any form of assault. This constitutes an unlawful conduct which may result in a civil and criminal sanction.

**Determination**

[20] The plaintiff's Particulars of claim reflects as follows:<sup>1</sup>

“6. On or about the 15<sup>th</sup> August, 2012, plaintiff was called to report at Matsapha Police Station and subsequent thereto Plaintiff was severely assaulted by 1<sup>st</sup> Defendant and suffered injuries to wit:-

- 6.1 Head injuries;
- 6.2 Constant nose bleed;
- 6.3 Partial loss of vision; and
- 6.4 Partial loss of sense of hearing.

7. As a result of the said assault and injuries Plaintiff sustained damages in the sum of E200, 650.00 (Two hundred thousand six hundred and fifty Emalangeneni) made up as follows:-

- 7.1 Medical expenses E 650.00
- 7.2 General damages for pain and suffering,  
Loss of the amenities of life, permanent  
Disability and indignitas E 150,000.00

**TOTALING THE SUM OF E 150,000.00”**

[21] Supporting his claim, the plaintiff testified under oath that he was summoned to the police station, Sigodvweni, Matsapha. The 1<sup>st</sup> defendant was among the police officers who interrogated him. He then attested:

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<sup>1</sup>A page 4 para 6 and 7



*“1<sup>st</sup> defendant stood up and assaulted me with open hands and fists until blood oozed out of my nostrils.”*

[22] In support of the injuries sustained, plaintiff testified that he went straight to the hospital where he was attended by the doctor. He submitted three documents in this regard. These appeared in the bundle of discovered documents. The court marked them as Exhibit B1, B2, and B3. I shall refer to their contents later. Under **Dr. Motuma** they were marked as Exhibit C1, C2 and C3 as originals of Exhibit B1, B2 and B3.

B3 reads:

	<b><i>“Out-patient record/prescription</i></b> <i>Name: Velezweni Mngometulu</i>
<b><i>Date</i></b>	<b><i>Company/Treatment/Referral</i></b>
<i>08/04/13</i>	<i>Painful eyes, ear side</i> <i>Post trauma, headache</i>
	<i>Plan</i> <i>bruffen 400g x 2, eye drops, ear drops, eye drops</i> <i>500g</i> <i>HTC – NR</i> <i>MBIKWAKHE CLINIC, P. O. Box 35,</i> <i>Mankayane”</i>

[23] **Dr. Motuma** testified on the medical conditions of the plaintiff. He acknowledge that he authored exhibit B1. He referred the court to exhibit C1 which read:

*“RFM HOSPITAL  
PRESCRIPTION*

*Index No: 22267/12*

*Date: 16/08/12*



**RE: VELEZWENI MNGOMETULU, AGE – 38, SEX - MALE**

*This letter serves to certify that the above mentioned patient was attended at R.F.M. Hospital on 16 August 2012 for allegedly assault by someone.*

*Findings on the day of examination showed multiple bruises on the face and right subconjunctival haemorrhage. He was treated accordingly and sent home.*

*Sincerely yours*

*Dr. Motuma D.*  
**SURGEON”**

[27] Later again on 27<sup>th</sup> September 2016, plaintiff, dissatisfied with exhibit C 3, came and ask for another report. **Dr. Motume** wrote exhibit C 4 which reads:

*“27 September 2016*

*To Whom It May Concern*

**RE: VELEZWENI MNGOMETULU, AGE – 40, SEX – MALE**

*This letter serves to certify that the above mentioned patient was attended at R.F.M. Hospital on the 16th August 2012 for allegedly assault by someone. Findings on the day of examination showed multiple bruises on the face and right subconjunctival haemorrhage. He was treated and followed up until alleged signs resolved.*

*According to the doctor’s report which was documented on the day the patient arrived at casualty, there is no future medical expenses, no permanent disability or future further follow up needed.*

*Thank you.*

*Sincerely yours*

*Dr. Motuma D*  
**SURGEON”**

[28] On the two medical report or letters **Dr. Motuma** was under cross-examined referred to Exhibit C1, a medical report by **Dr. Mkhize**. It was put to him that

the injuries mentioned by him in exhibits C 3 and C4 viz, multiple bruises on the face and right subconjunctival haemorrhage “were not mentioned in **Dr. Mkhize**’s report of 16<sup>th</sup> August, 2012 (Exhibit C 1). The doctor answered that it was so but these were possible injuries. Counsel on behalf of defendant then posed;

**Mr. Mndeni Vilakati** : “Is this your interpretation of **Dr. Mkhize**’s report or your assumption?”

**Dr. Motuma** : “My assumption.”

[29] I must hasten to point out that his assumption find no factual support in view of his own evidence that the mere fact that **Dr. Mkhize** merely administered bruffen as a pain killer upon plaintiff without further ado points out that the soft tissue injury was minor. This analysis finds further support from evidence later adduced by **Dr. Mkhize** based on medical examination of the plaintiff. **Dr. Mkhize** testified under oath that he referred plaintiff to an optician after he complained about his vision. This was on 23<sup>rd</sup> August, 2012. Before that he had read the nurses entry on plaintiff medical sheet marked as Exhibit D 2 which showed that the patient complained about pain in his head and right eye and that he would have nose bleeding sometimes.

[30] He had attended to the plaintiff on 16<sup>th</sup> August, 2012 as he identified Exhibit C1 as authored by him. On the 23<sup>rd</sup> August, 2012 he referred the plaintiff to an ophthalmic nurse. He, however, conducted his own examination on the plaintiff. As he complained about pain on the right ear, he examined him and found that it was normal. The ophthalmic nurse observed no bleeding on the nose. X-Ray results showed that his skull was normal. His eye was found to be 6/6 which meant that it was normal. The eye was found not to be red. The

cornea was clear. The arteria chamber was clear and pupil normal. He was however, given eye drops owing to the information sourced from him only.

[31] The plaintiff was also extensively examined based on the information tendered by him that he was experiencing bleeding sometimes. Upon examination of his nostrils, they were found to be normal. The doctor stated in this regard:

*“On presentation, he said he was bleeding. On examination nothing was found to tally with his bleeding.”*

[32] On his complaint about headache, he was found to have no meningitis. His head was found to be normal. At the end **Dr. Mkhize** advised him not to pickle his nose and avoid remaining in the sun. On 26<sup>th</sup> July 2013, he was examined again as he complained on the same pain. His vision was found to have improved. In his evidence in chief, **Dr. Mkhize** was shown Exhibit C 3. He pointed out that the findings on multiple injuries and subconjunctival haemorrhage were not consistent with his report.

[33] In brief the medical examination conducted by **Dr. Mkhize** and the ophthalmic nurse on the plaintiff on 16<sup>th</sup> August 2012, 26<sup>th</sup> June 2013 and 25<sup>th</sup> May, 2013 where not consistent with the information presented by plaintiff to **Dr. Mkhize** and the nurses. He exaggerated his condition and this could not be supported by medical examination. His claim of E150, 000.00 arising from pain and suffering, loss of amenities of life, permanent injuries fails to find supported from his own witnesses. **Dr. Motuma** himself who *“assumed multiple bruises on the face and subconjunctival haemorrhage”* authored under exhibit C4 on 26<sup>th</sup> September, 2016 *“[T]here is no future medical expenses, no permanent disability or future follow up needed.”*

[34] The next question is who assaulted plaintiff, if at all he was assaulted? The evidence of plaintiff is that he was assaulted by 1<sup>st</sup> defendant in the course of his employment. It is not clear why 1<sup>st</sup> defendant is then cited in the summons in his personal capacity. In support of this evidence, plaintiff, pointed out that police officer **Duma Mngometulu** arrived at the CID and intervened on his behalf by stopping 1<sup>st</sup> defendant from continuing with his unlawful assault on him.

[35] **Constable Duma Mngometulu** was called to testify. He confirmed that he met plaintiff at the CID's offices who was well known to him and had a brotherly relationship with him. Plaintiff was normal. He spoke with plaintiff who informed him that he was at the police station following an invitation by the police for purposes of interrogation. He also saw plaintiff on the following day who did complain to him that he had been assaulted by police.

[36] According to plaintiff's evidence both in chief and under cross-examination, **Duma Mngometulu** found him bleeding profusely. He was already soaked in blood when he intervened. 1<sup>st</sup> defendant stopped assaulting him and apologised thereafter. **Duma Mngometulu** was ordered by the court to appear in court after plaintiff Counsel's failure to secure his attendance. He was however, reported to be attending a course. He was in essence plaintiff's witness. He denied ever seeing plaintiff assaulted or blood soaked. In brief, plaintiff's evidence finds no support either from his own witnesses and the doctors.

[37] I appreciate that **Dr. Mkhize** found that plaintiff had a soft tissue injury which was described as minor. This evidence corroborates assault on the plaintiff.

It however does not corroborates assault of the magnitude described by plaintiff at the hands of 1<sup>st</sup> defendant. This evidence, juxtaposed with the evidence of the defence that 1<sup>st</sup> defendant was not in the company of the police officers who interrogated him on the indecent assault charge, points to one direction. That direction is that the soft tissue injury seen by **Dr. Mkhize** on plaintiff was not inflicted by the 1<sup>st</sup> defendant. Plaintiff sustained it from elsewhere.

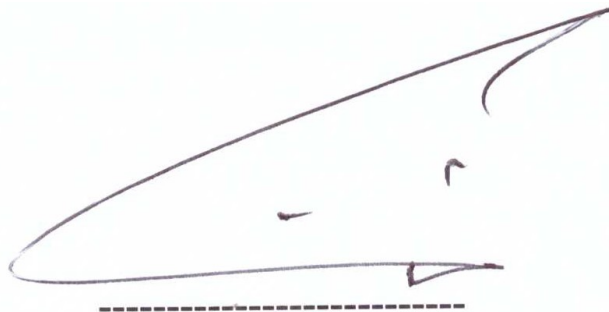
[38] The above analysis is fortified by plaintiff's further evidence throughout his testimony that after the assault at the hands of the 1<sup>st</sup> defendant at the police station, he proceeded straight to Raleigh Fitkin Memorial Hospital where he was attended by the doctor. Documentary evidence show however, that he only went to the doctor on the following day. Why when he was having a heavy bleeding? The answer is there was no such heavy bleeding. **Dr. Mkhize's** report of 16 August 2013, following day after the incident, mentions no heavy bleeding. Subsequent report by plaintiff on 21<sup>st</sup> August, 2012 on heavy bleeding is without any medical support as per **Dr. Mkhize's** evidence, as supported by medical examination in terms of Exhibit D 1 – D 4.

[39] Worse still, 1<sup>st</sup> defendant was said to be nowhere in or near the interrogation room on the 15<sup>th</sup> August, 2012. This evidence was tendered by the plaintiff's own witness, **Duma Mngometulu**. This piece of evidence was corroborated by 1<sup>st</sup> defendant and the officers who were interrogating plaintiff on 15<sup>th</sup> August, 2012. Then there is Exhibit 2 which was produced at plaintiff's instance. This is the statement recorded by plaintiff on 15<sup>th</sup> August, 2012 following his interrogation. His Counsel submitted that it did not detract from the defendant's version namely that plaintiff explained his side of the story in relation to an indecent assault complaint. It was never disputed to the defendant's witnesses that plaintiff appended his signature on Exhibit 2.

[40] In his written submission, the plaintiff protested 1<sup>st</sup> defendant's failure to plead an alibi. He urges the court to consider the alibi, as an afterthought. How, when the plaintiff's own witness under **Duma Mngometulu** testified in that respect? The analysis is that plaintiff's version changed. The 1<sup>st</sup> defendant's witnesses merely corroborated the new version by plaintiff. The plaintiff in his submission lamented the failure by defendant to bring as a witness someone who was with him as a witness to verify that 1<sup>st</sup> defendant was with him in the evening of the interrogation. With due respect such witness was unnecessary after the version that 1<sup>st</sup> defendant was not at the interrogation room let alone in the police station was adduced not by 1<sup>st</sup> defendant or his witnesses but by plaintiff's own witness, **Duma Mngometulu**.

[41] In the final analysis, the following orders are entered:

- 41.1 Plaintiff's cause of action is dismissed.
- 41.2 Plaintiff is ordered to pay defendants costs of suit.



**M. DLAMINI  
JUDGE**

For Plaintiff : **S. Masuku of Masuku Nsibande Attorneys**



For Defendant : **M. Vilakati of the Attorney General**